

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 10, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP1205-CR

Cir. Ct. No. 2013CF2702

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DIANA GARCIA,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Kessler and Brennan, JJ., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Diana Garcia appeals a judgment convicting her of second-degree reckless homicide with use of a dangerous weapon. She also appeals an order denying her postconviction motion for resentencing. She argues that the circuit court erroneously exercised its sentencing discretion because it did

not adequately explain how the sentence it imposed was warranted by the gravity of the offense, her character and rehabilitative needs, and the need to protect the public. We affirm.

¶2 Garcia was convicted after a guilty plea of second-degree reckless homicide for killing Antonio Duran, her boyfriend. The circuit court sentenced her to twenty-five years of imprisonment, with sixteen years of initial confinement and nine years of extended supervision. Garcia filed a postconviction motion for resentencing, which the circuit court denied.

¶3 “The principal objectives of a sentence include, but are not limited to, the protection of the community, the punishment of the defendant, rehabilitation of the defendant, and deterrence to others.” *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. “A sentencing court should indicate the general objectives of greatest importance and explain how, under the facts of the particular case, the sentence selected advances those objectives.” *Id.* Among the factors the sentencing court should consider in framing its sentence are the gravity of the offense, the character of the defendant, the defendant’s past criminal record, the vicious or aggravated nature of the crime, the defendant’s remorse, and information in the presentence investigation report. *Id.*

¶4 On appeal, our review of a circuit court’s sentencing decision is limited to determining whether the circuit court misused its discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. There is a strong public policy against interfering with the circuit court’s sentencing decision because the circuit court is in the best position to consider the demeanor of the defendant and to apply the relevant sentencing factors based on the circumstances of the case. *State v. Hall*, 2002 WI App 108, ¶9, 255 Wis. 2d 662, 648 N.W.2d

41. We will search the record for reasons to sustain the circuit court’s exercise of sentencing discretion if the circuit court fails to adequately explain the reasons for the sentence it imposed. *See id.*, ¶6.

¶5 Garcia contends that the circuit court misused its sentencing discretion because it did not explain how the gravity of the offense, her character and rehabilitative needs, and the need to protect the public warranted the sentence the court imposed. We disagree. The circuit court explained that Duran’s untimely death was horrific and tragic. The court pointed out that while Garcia did not have a prior criminal record, which mitigated in her favor, she needed to be punished because she brought a loaded gun with her when she went to Duran’s house and shot him in the back as he was walking away, even though she was in a car and could have easily chosen to simply drive off instead. The court said that Duran’s death at her hands deprived his family members of ever again being able to see “their cousin, brother, son.”

¶6 The circuit court also noted negative aspects of Garcia’s character, like the fact that Garcia lied to the police about what she did with the gun after the murder and, according to the person who prepared the presentence investigation report, she regretted her actions that led to the criminal charge against her, but did not seem to regret specifically the fact that she fatally injured Duran.

¶7 In sum, the circuit court explained that Garcia’s reprehensible acts and their impact on the community demanded a lengthy period of confinement as punishment. We reject Garcia’s argument that the circuit court misused its sentencing discretion by failing to adequately explain why it imposed her sentence.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT.
RULE 809.23(1)(b)5. (2013-14).

